IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9261 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRATBEN WD/O. MANGAJI SHANKARJI GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9261 of 2002

MRS DT SHAH for Petitioner No. 1

MR PRADIP D BHATE A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner is a widow of one Mangaji Shankarji Gohil who had rendered service to Roads and Building Department of the Government of Gujarat. It is

the say of the petitioner that her deceased husband joined the employment in the year 1968 on ad hoc basis. Thereafter with effect from 24th July, 1974, he was employed as daily wager and his name was included in the muster roll. He was thereafter appointed as permanent workcharged labourer with effect from 20th February, 1983. As workcharged labourer on 16th September, 1985, he was given increment. On 31st December, 1987, he retired from the service on reaching the age of superannuation. In November, 1988, he expired. The present petitioner therefore, vide representation dated 5th December, 1988, made twofold request to respondent no. 2. Firstly, that she may be given employment on compassionate ground and secondly that the retiral benefits which would have been available to her deceased husband be paid to her. Since then, several representations appeared to have been made by her repeating the said requests. By letter dated 10th March, 1991, the petitioner was informed by the Deputy Executive Engineer, Patnagar Yojana, Sub-Division No. 10, Gandhinagar that in view of the letter received from the office of the Directorate, Pension and Provident Fund, to the effect that since the period of service rendered by the deceased was less than five years, he would not have been entitled to receive pension, gratuity and other benefits and consequently the petitioner would not get any benefit. The petitioner however, persisted her efforts to obtain the retiral benefits of her husband.

1.1. It appears that in the meanwhile, one Juvanji Juhaji Thakor who was co-employee of the deceased husband of the petitioner, in similar set of circumstances, approached this Court by filing Special Civil Application No. 9778 of 2000. In his case also, the Government had taken the same and namely that he had not put in service of requisite period entitling him to receive pension and other benefits. The said decision of the Government was intimated to him vide order dated 31st August, 1999. The said order was, therefore, challenged before this Court. In that case, Juvanji Juhaji Thakor was appointed as daily wager in the year 1965-66 and thereafter as workcharged employee with effect from 19th February, 1983 and in the year 1990, i.e. on 31st December, 1990, he retired upon reaching the age of superannuation. The grievance of Juvanji in that petition was that while computing requisite period of service for pension, the years for which he had rendered service as "Rojamdar" ought to have been included. In other words, according to him, his service as "Rojamdar" was required to be counted for the purpose of deciding whether he was entitled to receive pension. This Court (Coram : C.K.

Buch, J.) by judgment dated 6th October, 2001, allowed the petition by holding that for the purpose of counting pensionable service period, service as "Rojamdar" was required to be taken into consideration.

1.2. The present petitioner on the same ground has now approached this Court. According to her, injustice has been done to her because the service of about nine years is not being taken into consideration by the respondents for deciding whether her deceased husband was entitled to receive pension. It may be noted here that in identical situation another learned Single Judge of this Court (Coram : P.B. Majmudar, J.) by decision dated 12th July, 2001 rendered in the case of Sonaben Nanjibhai Patadia v. State of Gujarat in Special Civil Application No. 3595 of 2001 had held as under :-

> "7. In view of the aforesaid judgment, the period between 12.1.1982 and 12.1.1987, during which the husband of the petitioner was serving as Rojamdar, is also required to be considered for the purpose of fixing pensionary benefits. However, in view what is stated above, last five years services proceeding the appointment of the petitioner's husband as a Workcharged employee is required to be paid as there is no dispute that after completion of five years service as a Rojamdar, he was appointed as a workcharged employee. Therefore, while calculating the pension, the services put in by the petitioner's husband from 12.1.82 to 12.1.87 and thereafter from 1987 till he superannuated, is required to be taken into consideration and for that purpose. The Department is directed to fix the pension of the petitioner's husband and Department is also directed to give the benefit of family pension to the petitioner on that line. Decision in this connection may be taken within the period of two months from today and whatever amount is required to be paid on that basis, the same may be paid within a period of one month thereafter. If there is a delay in making such payment, the petitioner, will be entitled to interest at the rate of 12% per annum for the entire amount in question. The petitioner will be entitled to the difference in gratuity, if any, on the basis of the aforesaid period which is required to be taken into consideration and, therefore, the difference in the gratuity amount which is required to be paid within a period of three months. Rule is made absolute to the aforesaid

extent with no order as to costs."

1.3. According to Mrs. D.T. Shah learned advocate for the petitioner that these decisions have not been challenged and have been implemented by the respondents. Considering the facts of the present case, it is very clear that the deceased husband of the petitioner was standing on the same footing i.e. he had rendered service as "Rojamdar" for almost more than nine years and thereafter as workcharged for the period between 21st November, 1983 and 31st December, 1987. The total period of his service, therefore, comes to almost twelve years and eight months. If that be so, he would be entitled to receive pension and other retiral benefits such as gratuity. Upon his death naturally, the petitioner would be entitled to receive this benefit by way of family pension since the scheme of family pension squarely applies in such cases. Even in the case of Sonaben Nanjibhai Patadia (Supra) this Court has given direction not only to fix pension to the deceased husband of the petitioner of that case but even to given the benefit of family pension on that line.

2. In view of the aforesaid two judgments, there is no doubt in my mind that the present petitioner is entitled to receive pensionary benefit on behalf of her husband. However, as can be seen that the petitioner's husband had retired on 1st January, 1988 and he expired in the month of November, 1998. During that period no attempt was made by the deceased husband to lodge any claim of pension, therefore, for that period, no pension is required to be paid. However, upon his death, the petitioner has been requesting the respondents to pay to her retiral benefits of her deceased husband and also family pension but the same has not been paid to her.

In view thereof, the respondents are required to pay to her the family pension as well as gratuity together with interest at the rate of 12%. This petition is, therefore, allowed. The respondents are directed to work out the amount of pension payable to the deceased husband and on the same line to work out the family pension to be paid to the petitioner and the amount of gratuity. This exercise to be carried out on or before 30th June, 2004. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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